



19 FEB 2003

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
www.uspto.gov

Stefanie Howell  
Carr & Ferrell, LLP  
2225 East Bayshore Road, Suite 200  
Palo Alto, CA 94303

In re Application of	:	DECISION ON PETITION
HERSH, et al.	:	
Application No.: 09/701,797	:	UNDER 37 CFR 1.47(a)
PCT No.: PCT/US99/12433	:	
Int. Filing Date: 03 June 1999	:	AND RENEWED
Priority Date: 03 June 1998	:	
Attorney Docket No.: PA1675US	:	PETITION UNDER
For: METHOD FOR INCREASED CONCURRENCY	:	
IN A COMPUTER SYSTEM	:	37 CFR 1.137(b)

This decision is in response to applicant's "Renewed Petitions Under 37 CFR 1.47(a) and 37 CFR 1.137(b)" filed 27 November 2002.

### **BACKGROUND**

On 03 October 2002, applicant was mailed a decision dismissing applicant's petition under 37 CFR 1.137(b) for revival of the present application. Applicant was afforded two months to file any request for reconsideration.

On 27 November 2002, applicant filed the present "Renewed Petitions Under 37 CFR 1.47(a) and 37 CFR 1.137(b)."

### **DISCUSSION**

#### **A. Petition Under 37 CFR 1.47(a)**

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(I), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

As detailed in the decision mailed 03 October 2002, 37 CFR 1.47 applies only where a **known** legal representative of a deceased inventor cannot be found or reached after diligent effort, or refuses to make application. In such cases, the last known address of the legal representative must be given (see MPEP § 409.03(e)). In the present case, the inventor's original

legal representative is deceased. The declaration of Mr. Ruotolo states that he could not locate a current legal representative for inventor Sullivan's estate. Thus, the petition under 37 CFR 1.47 to accept the application without the legal representative is inappropriate pursuant to MPEP 409.03(c). Applicant must seek Mr. Sullivan's current legal representative. If inventor Sullivan's widow Joan Todd was the only heir to Mr. Sullivan's estate, applicant should seek the heirs to Ms. Todd's estate. In any event, in order to proceed under 37 CFR 1.47(a), applicant is required to identify the non-signing party as detailed above. Where there is no legal representative to the estate, any court of competent jurisdiction should appoint the legal representative for the sole purpose of prosecuting the application. Accordingly, the renewed petition under 37 CFR 1.47(a) is dismissed.

#### **B. Petition Under 37 CFR 1.137(b)**

As detailed in the decision mailed 30 May 2002, a petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional abandonment must be accompanied by (1) the required reply, (2) the petition fee required by law, (3) a statement that the, "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional" and (4) any terminal disclaimer and fee pursuant to 37 CFR 1.137(c) (where required). Applicant previously satisfied items (2), (3) and (4) above.

Regarding item (1), a proper reply in the present case would have been an executed declaration compliant under 37 CFR 1.497(a)-(b) and, if the legal representative refused to sign or could not be reached after diligent effort, a grantable petition under 37 CFR 1.47(a). As applicant's petition under 37 CFR 1.47(a) has been dismissed for the reasons stated above, the required reply has not been filed.

For the reasons stated above, the petition for revival cannot be granted at this time and the application remains abandoned.

#### **CONCLUSION**

Applicant's petition under 37 CFR 1.47(a) is **DISMISSED**.

Applicant's renewed petition under 37 CFR 1.137(b) is **DISMISSED**.

If reconsideration on the merits of these petitions is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petitions Under 37 CFR 1.47(a) and 37 CFR 1.137(b)." No additional petition fee is required.

Application No.: 09/701,797

3

Any further correspondence with respect to this matter should be directed to the Assistant Commissioner for Patents, Box PCT, Washington, DC 20231, with the contents of the letter marked to the attention of the PCT Legal Office.



Leonard Smith  
Legal Examiner  
PCT Legal Office



Derek A. Putonen  
Attorney Advisor  
PCT Legal Office  
Tel: (703) 305-0130  
Fax: (703) 308-6459